

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

		X
KELLY TOYS HOLDINGS, LLC,	:	
	:	<u>ORDER AND OPINION</u>
	:	<u>ADOPTING MAGISTRATE'S</u>
	:	<u>REPORT AND</u>
-against-	:	<u>RECOMMENDATION AND</u>
	:	<u>GRANTING MOTION FOR</u>
ALIALIALILL STORE, et al.,	:	<u>DEFAULT JUDGMENT</u>
	:	
Defendants.	:	21 Civ. 8434 (AKH) (RWL)
	X	

ALVIN K. HELLERSTEIN, U.S.D.J.:

On October 6, 2021, Plaintiff Kelly Toys Holdings, LLC (“Plaintiff”) commenced this action seeking damages and injunctive relief against 48 Defendants,¹ allegedly engaged in marketing and selling counterfeit versions of Plaintiff’s Squishmallows line of collectible dolls. (ECF No. 8). Plaintiff asserted various claims under the federal trademark and copyright laws,² as well as related state law and common-law claims. Plaintiff also moved *ex parte* for a temporary restraining order (“TRO”), expedited discovery, and other relief. (ECF No. 14–16). On October 25, 2021, the Court granted the TRO, which included an asset restraining order on each Defendant’s financial and online service accounts. (ECF No. 17). On November 12, 2021, the Court entered a preliminary injunction

¹ The initial complaint named 62 Defendants; however, prior to the Magistrate issuing its Report and Recommendation (“R&R”) (ECF No. 33), Plaintiff voluntarily dismissed its claims against six, pursuant to Fed. R. Civ. P. 41(a). *See* ECF Nos. 28, 33. After the Magistrate issued its R&R, Plaintiff moved to dismiss its claims against eight additional defendants (ECF No. 39). The R&R included an attachment listing the Defaulting Defendants and their respective allegedly wrongful uses of Plaintiff’s Squishmallow marks. *See* Attachment A, Report and Recommendation, ECF No. 37. I approve dismissal, and therefore attach, an edited version of the R&R’s Attachment A, striking the newly dismissed defendants.

² Plaintiff asserted federal claims for trademark infringement of its federally registered trademarks in violation of the Federal Trademark Act (the “Lanham Act”), 15 U.S.C. §§ 051 *et seq.*; counterfeiting of its federally registered trademarks in violation of 15 U.S.C. §§ 1114(1)(a)-(b), 1116(d), and 1117(b)-(c); false designation of origin, passing off, and unfair competition in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a); and, copyright infringement of federally registered copyrights in violation of the Copyright Act of 1976, 17 U.S.C. §§ 101 *et seq.*

order, mirroring the terms of the TRO and extending through the pendency of this action (ECF Nos. 10, 21). The Defaulting Defendants, identified in the attached chart, have not appeared in this action and failed to answer or otherwise respond to the Complaint. On March 9, 2022, the Clerk of Court entered default against each Defaulting Defendant. (ECF Nos. 27).

On March 11, 2022, Plaintiff moved pursuant to Federal Rule of Civil Procedure 55 for default judgment against the Defaulting Defendants, (ECF No. 29), seeking (1) entry of a final judgment and permanent injunction; (2) statutory damages pursuant to 15 U.S.C. § 1117(c) in the amount of \$50,000 against each Defaulting Defendant along with postjudgment interest; and (3) leave to serve restraining order notices on the Defaulting Defendants and third-parties holding assets of the Defaulting Defendants pursuant to Fed. R. Civ. P. 69(a)(1) and N.Y. C.P.L.R. § 5222.

On March 17, 2022, Plaintiff's motion was referred to United States Magistrate Judge Robert W. Lehrburger for a Report and Recommendation ("R&R").³ (ECF No. 34). Judge Lehrburger entered an order requiring Defendants to file any response to Plaintiff's motion no later than April 16, 2022 (ECF No. 35); Defendants failed to respond. On May 19, 2022, Judge Lehrburger issued an R&R (ECF No. 37) recommending that I enter a judgment in favor of Plaintiff against each Defaulting Defendant that (1) makes permanent the injunctive relief previously imposed by the PI Order (except for asset-freeze provisions); (2) awards Plaintiff statutory damages pursuant to 15 U.S.C. § 1117(c) in the amount of \$50,000 against each Defaulting Defendant along with post-judgment interest; and, (3) grants permission to serve asset restraining order notices pursuant to N.Y.

³ This case was originally assigned to Judge Alison Nathan but was reassigned to me on April 6, 2022, after Judge Nathan was elevated to the Court of Appeals for the Second Circuit.

C.P.L.R. § 5222 and dissolves the 30-day stay that would otherwise delay Plaintiff's ability to serve the notices. *See* R&R at 27.

No party has objected to the R&R, and the time to do so has passed. *See* Fed. R. Civ. P. 72(b)(2) (requiring specific written objections to an R&R to be served and filed within 14 days after being served with a copy of the recommended disposition); *see also* ECF No. 37 (requiring written objections to the R&R be filed by June 2, 2022). Accordingly, I review the R&R for clear error. *See Urena v. New York*, 160 F. Supp. 2d 606, 609–10 (S.D.N.Y. 2001) (“To accept the report and recommendation of a magistrate, to which no timely objection has been made, a district court need only satisfy itself that there is no clear error on the face of the record.”); *Porter v. Potter*, 219 Fed. App’x 112, 113 (2d Cir. 2007) (summary order) (“Failure to object timely to a magistrate’s report operates as a waiver of any further review of the magistrate’s decision.”); *see also Thomas v. Arn*, 474 U.S. 140, 150 (1985) (noting that Congress provided for a “clearly erroneous or contrary to law” standard where parties fail to object).

I have reviewed both the record and the R&R, and finding no clear error, adopt the R&R (ECF No. 37). The Clerk shall enter judgment in favor of Plaintiff against each Defaulting Defendant that (1) makes permanent the injunctive relief previously imposed by the preliminary injunction order (ECF No. 10) (except for asset-freeze provisions); (2) awards statutory damages pursuant to 15 U.S.C. § 1117(c) in the amount of \$50,000 against each Defaulting Defendant along with postjudgment interest; and (3) provides for immediate execution and grants costs to Plaintiff as taxed by the Clerk. Plaintiff shall provide forms of judgment to the Clerk.

Plaintiff's request to voluntarily dismiss its claims against the 8 remaining Defendants named in its Notice of Voluntary Dismissal (ECF No. 39) is granted. The Clerk of Court shall terminate the motion (ECF No. 29) and close the case.

SO ORDERED.

Dated: June 9, 2022
New York, New York

/s/ Alvin K. Hellerstein
ALVIN K. HELLERSTEIN
United States District Judge

21-CV-8434 ATTACHMENT A: DEFAULTING DEFENDANTS

NO.	DEFAULTING DEFENDANT	DEFAULTING DEFENDANT'S WRONGFUL USE OF PLAINTIFF'S SQUISHMALLOWS MARKS IN THE UNDISPUTED EVIDENCE	STATUTORY DAMAGES AWARD
1	alialialiLL Store	Twenty (20) infringing uses of Plaintiff's Squishmallows Marks (Complaint, Ex. D, pp.3-22).	\$50,000.00
2	baby -shopping Store	Seventeen (17) infringing uses of Plaintiff's Squishmallows Marks (Complaint, Ex. D, pp.31-47).	\$50,000.00
3	Bazinga Store	Twenty-One (21) infringing uses of Plaintiff's Squishmallows Marks (Complaint, Ex. D, pp.56-76).	\$50,000.00
4	BBOTTRUOYS Toy Store	Twenty (20) infringing uses of Plaintiff's Squishmallows Marks (Complaint, Ex. D, pp.85-104).	\$50,000.00
5	boboniu Store	Twenty (20) infringing uses of Plaintiff's Squishmallows Marks (Complaint, Ex. D, pp.113-132).	\$50,000.00
6	chenwanju Store	Eighteen (18) infringing uses of Plaintiff's Squishmallows Marks (Complaint, Ex. D, pp.141-158).	\$50,000.00
7	Children Growing Tree Store	Twenty-One (21) infringing uses of Plaintiff's Squishmallows Marks (Complaint, Ex. D, pp.167-187).	\$50,000.00
8	Chinese Plush Toy Store	Twenty-One (21) infringing uses of Plaintiff's Squishmallows Marks (Complaint, Ex. D, pp.196-216).	\$50,000.00

9	Dongguan Shengen Hardware Plastic Co., Ltd.	One (1) infringing use of Plaintiff's Squishmallows Marks (Complaint, Ex. D, pp.225).	\$50,000.00
10	Dongguan Woodfield Baby Products Company Limited	Five (5) infringing uses of Plaintiff's Squishmallows Marks (Complaint, Ex. D, pp.232-236).	\$50,000.00
11	Dongguan Xingke Gift Co., Ltd.	One (1) infringing use of Plaintiff's Squishmallows Marks (Complaint, Ex. D, pp.243).	\$50,000.00
12	Dropshipping-Toys Store	Seven (7) infringing uses of Plaintiff's Squishmallows Marks (Complaint, Ex. D, pp.250-256).	\$50,000.00
13	Fairylands Toy Store	Twenty-One (21) infringing uses of Plaintiff's Squishmallows Marks (Complaint, Ex. D, pp.265-285).	\$50,000.00
14	FCOT Store	Fifteen (15) infringing uses of Plaintiff's Squishmallows Marks (Complaint, Ex. D, pp.292-306).	\$50,000.00
15	Fourtry Store	Twenty-One (21) infringing uses of Plaintiff's Squishmallows Marks (Complaint, Ex. D, pp.313-333).	\$50,000.00
16	Francis 001 Store	Six (6) infringing uses of Plaintiff's Squishmallows Marks (Complaint, Ex. D, pp.342-344, 350-352).	\$50,000.00
17	Fun Game Fun Store	Twenty-One (21) infringing uses of Plaintiff's Squishmallows Marks (Complaint, Ex. D, pp.361-381).	\$50,000.00
18	Guangdong Sansan Supply Chain Co., Ltd.	Twelve (12) infringing uses of Plaintiff's Squishmallows Marks (Complaint, Ex. D, pp.390-402).	\$50,000.00

19	Guangzhou Little Talent Toys Co., Ltd.	Two (2) infringing use of Plaintiff's Squishmallows Marks (Complaint, Ex. D, pp.409-410).	\$50,000.00
20	Guangzhou Yimai Trading Co., Ltd.	Twenty-One (21) infringing uses of Plaintiff's Squishmallows Marks (Complaint, Ex. D, pp.417-437).	\$50,000.00
21	Hangzhou Agreat Import & Export Co. Ltd.	Eleven (11) infringing uses of Plaintiff's Squishmallows Marks (Complaint, Ex. D, pp.444-454).	\$50,000.00
22	Hebei Kuni Animation Industry Co., Ltd.	Two (2) infringing uses of Plaintiff's Squishmallows Marks (Complaint, Ex. D, pp.461-462).	\$50,000.00
23	Henan Yinghuozhiguang Culture Media Co., Ltd.	Two (2) infringing uses of Plaintiff's Squishmallows Marks (Complaint, Ex. D, pp.469-470).	\$50,000.00
24	Mikecrack Store	Sven (7) infringing uses of Plaintiff's Squishmallows Marks (Complaint, Ex. D, pp.477-483).	\$50,000.00
25	Monster Jellie Culture Co., Ltd.	One (1) infringing use of Plaintiff's Squishmallows Marks (Complaint, Ex. D, p.490).	\$50,000.00
26	Nanjing Ruifutong Arts And Toys Manufacturing Co., Ltd.	Six (6) infringing uses of Plaintiff's Squishmallows Marks (Complaint, Ex. D, pp.504-508, 510).	\$50,000.00
27	QWJA Store	Five (5) infringing uses of Plaintiff's Squishmallows Marks (Complaint, Ex. D, pp.517-521).	\$50,000.00
28	Shanghai Qianjiu Trading Co., Ltd.	Two (2) infringing uses of Plaintiff's Squishmallows Marks (Complaint, Ex. D, pp.528-529).	\$50,000.00

29	Shenzen Tongfei International Trade Co., Ltd.	Twenty-One (21) infringing uses of Plaintiff's Squishmallows Marks (Complaint, Ex. D, pp.536-556).	\$50,000.00
30	Shenzen Hechun Technology Co., Ltd.	Eleven (11) infringing uses of Plaintiff's Squishmallows Marks (Complaint, Ex. D, pp. 563-573).	\$50,000.00
31	Shenzen Qinghong Toys Co., Ltd.	One (1) infringing use of Plaintiff's Squishmallows Marks (Complaint, Ex. D, pp. 582).	\$50,000.00
32	Shop5477120 Store	Eighteen (18) infringing uses of Plaintiff's Squishmallows Marks (Complaint, Ex. D, pp.589-606).	\$50,000.00
33	Shop910893006 Store	Nineteen (19) infringing uses of Plaintiff's Squishmallows Marks (Complaint, Ex. D, pp.615-633).	\$50,000.00
34	SI TING Store	Twenty (20) infringing uses of Plaintiff's Squishmallows Marks (Complaint, Ex. D, pp.640-659).	\$50,000.00
35	SZ Gteak Technology Co., Limited	One (1) infringing use of Plaintiff's Squishmallows Marks (Complaint, Ex. D, p.666).	\$50,000.00
36	TC XRC Store Store	Seventeen (17) infringing uses of Plaintiff's Squishmallows Marks (Complaint, Ex. D, pp. 673-689).	\$50,000.00
37	TIKTOK IP Store	Twenty (20) infringing uses of Plaintiff's Squishmallows Marks (Complaint, Ex. D, pp. 696-715).	\$50,000.00
38	VL Store	Twenty (20) infringing uses of Plaintiff's Squishmallows Marks (Complaint, Ex. D, pp.722-741).	\$50,000.00

39	Xinxiang Puruige Import And Export Trading Co., Ltd.	One (1) infringing use of Plaintiff's Squishmallows Marks (Complaint, Ex. D, p.748).	\$50,000.00
40	YaMong Store	Twenty (20) infringing uses of Plaintiff's Squishmallows Marks (Complaint, Ex. D, pp.755-774).	\$50,000.00
41	Yangzhou Aixini International Trade Import And Export Co., Ltd.	Three (3) infringing uses of Plaintiff's Squishmallows Marks (Complaint, Ex. D, p.781).	\$50,000.00
42	Yangzhou Aorunju Gifts Co., Ltd.	Twelve (12) infringing uses of Plaintiff's Squishmallows Marks (Complaint, Ex. D, pp.788-799).	\$50,000.00
43	Yangzhou Babyjoy Arts & Crafts Co.	One (1) infringing use of Plaintiff's Squishmallows Marks (Complaint, Ex. D, p.806).	\$50,000.00
44	Yangzhou Cuteshoot Plushies Co., Ltd	Four (4) infringing uses of Plaintiff's Squishmallows Marks (Complaint, Ex. D, pp.813-816).	\$50,000.00
45	Yangzhou Dulala Crafts Ltd.	One (1) infringing use of Plaintiff's Squishmallows Marks (Complaint, Ex. D, p.823).	\$50,000.00
46	Yangzhou Kingstone Toys Co., Ltd.	Eleven (11) infringing uses of Plaintiff's Squishmallows Marks (Complaint, Ex. D, pp.830-840).	\$50,000.00
47	Yangzhou Marisa Toy Gifts Co., Ltd.	One (1) infringing use of Plaintiff's Squishmallows Marks (Complaint, Ex. D, pp.847).	\$50,000.00
48	Yangzhou SCS Hometextile Co., Ltd	One (1) infringing use of Plaintiff's Squishmallows Marks (Complaint, Ex. D, pp.854).	\$50,000.00

49	Yangzhou Wosen Toys Co., Ltd.	Thirteen (13) infringing uses of Plaintiff's Squishmallows Marks (Complaint, Ex. D, pp.871-883).	\$50,000.00
50	Yiwu Chuanyu Import And Export Firm	Twelve (12) infringing uses of Plaintiff's Squishmallows Marks (Complaint, Ex. D, pp.890-901).	\$50,000.00
51	Yiwu Duotong E-Commerce Co., Ltd	One (1) infringing use of Plaintiff's Squishmallows Marks (Complaint, Ex. D, p.915).	\$50,000.00
52	Yiwu Fuguan Household Supplies Co., Ltd.	Seventeen (17) infringing uses of Plaintiff's Squishmallows Marks (Complaint, Ex. D, pp.922-938).	\$50,000.00
53	Yiwu Haiping Bag Factory	One (1) infringing use of Plaintiff's Squishmallows Marks (Complaint, Ex. D, p.945).	\$50,000.00
54	Yiwu Quanfa Import & Export Company Limited	One (1) infringing use of Plaintiff's Squishmallows Marks (Complaint, Ex. D, p.952).	\$50,000.00
55	Yiwu Victory Import & Export Co., Ltd.	One (1) infringing use of Plaintiff's Squishmallows Marks (Complaint, Ex. D, p.959).	\$50,000.00
56	Yiwu Xintu Import And Export Co., Ltd.	Nine (9) infringing uses of Plaintiff's Squishmallows Marks (Complaint, Ex. D, pp.966-974).	\$50,000.00